

Meeting Notes: Government-to-Government Consultation

April 4, 2000 - Boise, ID

Representatives of nine Northwest Indian Tribes and eight Federal government agencies met in a government-to-government consultation on Tuesday, April 4, 2000, from 1:30 p.m. to 5:00 p.m. at the DoubleTree Riverside Hotel in Boise, Idaho. The topics on the consultation agenda included a number of issues related to hydroelectric operations and fish and wildlife mitigation in the Columbia River Basin, and tribal concerns regarding the Federal Caucus' All H paper and related activities. Approximately 43 people attended the consultation. A list of the attendees is attached to this report.

Facilitator, Chad Colter, Shoshone-Bannock Tribes, opened the meeting stating that the agenda had been revised to include items from the March 24 meeting in Spokane. Specifically:

Items A-F under topic 11, Overarching Issues, from the March 24 agenda were added to item 11 of the April 4 agenda titled, "Review of Agreements and Commitments from March 24th Spokane Meeting.¹¹

A third item, Federal responsibility for harvest allocations for up-river tribes, was added under III, A of the April 4 agenda,

Items 1 -5 under topic TTI, A, Hydropower Discussion, from the March 24 agenda were added to 111, B of the April 4 agenda. In addition, "Hell's Canyon operations" was also added,

Items 1-4 under topic III, C, Habitat Discussion, from the March 24 agenda were added to topic III, C, Habitat, of the April 4 agenda.

Items A-D under topic IV, Need for Coordination, Collaboration - Governmental Funding, from the March 24 agenda were added to topic TV, Need for Coordination, Collaboration - Governmental Funding, of the April 4 agenda.

Claudeo Broncho, Vice Chairman, Shoshone-Bannock Tribes - Welcomed the representatives from the federal agencies stating that the resources from the Upper Columbia and Snake rivers all constituted resources of the Shoshone-Bannock Tribes.

Terry Gibson, Shoshone-Paiute Tribes - His tribe does not take the "stones and bones" approach to cultural resources but, instead, views all cultural resources as connected. He said it is difficult for his tribe to participate with the federal agencies in dealing with cultural resource issues because of a lack of funding. It is important to apply Bulletin 38 to cultural sites. The Shoshone-Paiute Tribes may need ethnographic work done in order to show how the tribes used different areas and different cultural properties. But the knowledge gained from archaeology is limited and the approach taken by academic archaeologists has taken away cultural resources from Indians. A clarification is needed of how executive order tribes will be treated compared to treaty tribes. The executive order tribes should be treated as equals with the treaty tribes. The Shoshone-Paiute, Shoshone-Bannock and Bunis-Paiute tribes have formed the Upper Snake Compact so that they can speak with a unified voice on issues of common interest. It is essential that the tribes obtain adequate funding so they can participate in a good-faith manner with the agencies on cultural resource matters.

Judi Johansen, BPA Administrator - Thanked the Shoshone-Bannock Tribes for hosting the meeting. She said the agencies had come with open minds and open hearts to seek a common ground of understanding with the tribal governments,

Col. Mogren, U.S. Army Corps of Engineers - Thanked the tribes for coming together to meet at the governmental level to identify common issues and address them collectively.

Keith Hatch, Bureau of Indian Affairs - He had been in touch with Chuck James who said he was willing to

get back involved. Mr. James will be in touch with the Co

Brian Flett, Spokane Tribe of Indians - The meeting did not feel like a government-to-government meeting to him. He said he did not regard the meeting as a consultation.

Joe Peone, Colville Confederated Tribes - The federal agencies were directed by CEQ chairman George Frampton to meet with the tribes. He said the record should show that the agencies have followed through.

Chad Colter - The agencies as well as the tribes need to clarify who their respective decision makers are,

Deb Louie, Colville Confederated Tribes - The group needs to focus on basin-wide issues and forgo among these is saving the salmon.

Chad Colter - Suggested that the meeting focus on the overarching issues under topic II, A of the agenda. These included the agencies' Trust responsibility, cultural resources, resident fish, blocked areas, hydro operations, water quality and the process needed to address these issues.

Jim Martin, Bums-Paiute Tribe - There is a need to confirm the process for addressing these issues and the federal commitment to follow through. He said he is worried that the process is being removed and asked that more be done. He said his tribe needs a commitment from BPA. If his tribe has to fight for every dollar, the situation becomes too complex.

Deb Louie - Asked if NMFS requires additional water from the Snake River for salmon, will ESA override other water agreements.

Chad Colter - said the issue of how additional flow augmentation affects the upper Snake River needs to be addressed.

Ted Howard, Shoshone-Paiute Tribes - Observed that the Shoshone-Paiutes have tribal reserved water rights.

Claudio Broacho, Shoshone-Bannock Tribes - The tribes have given up much land and that members of tribal families were dispersed throughout the basin. Executive order tribes should have equal rights with treaty tribes. The tribal cultural resources are found over a wide geographic area. The federal agencies need to understand the tribes' rights. He urged that the agencies look at the whole area. The water in the rivers is not suitable for fish. The Hells Canyon Dam has had a major effect on fish. You cannot trade part of the environment in one area for another.

Col. Mogren - The federal government's Trust responsibility applies equally to all tribes whether treaty or executive order. The Columbia River later-Tribal Fish Commission is a voice for the down-river tribes but the concerns and interests of the up-river tribes are just as valid. Some interests are mutually exclusive but the agencies are looking for a common ground. The Corps of Engineers takes its Trust responsibility very seriously.

Claudeo Broncho - His tribe's main interest is to save the salmon. The treaties came before ESA.

Deb Louie - Regardless of the source of the water, the issue is who pays to protect cultural sites.

Terry Gibson - There is a need to define action items that are tribal-specific and to follow up on these. His tribe is receiving no money for cultural resource work and, as a result, its cultural resources effort is paralyzed. The situation is complicated by the fact that the Shoshone-Paiute Tribes are under the jurisdiction of the Phoenix office of the BTA. The question is how will the federal government fulfill its obligations. Cultural resource management plans are needed. His tribe became aware of the All-H Paper because of information shared by the Shoshone-13annock Tribes. The Shoshone-Paiutes have asked for a meeting with NMFS and would like a commitment from them. The Shoshone-Paitites have zero dollars for cultural resources and, unless something is done within the next two weeks, its one-nian department will fold. We won't go away. The requirements of Elie Native American Graves Preservation and Repatriation Act must be implemented, MoUs developed and a partnership formed. Resident fish are an important resource for the Shoshone-Paiutes. Red band trout are only found in the Duck Valley area of Idaho. Gibson requested a meeting with the agencies.

Brian Flett - The Spokane Tribes have common concerns with tribes in Idaho. Each tribe also has its own individual concerns. There needs to be a meeting of up-river tribes in Idaho and Washington as well as federal agencies to develop an agreement related to the NHPA (National Historic Preservation Act), necessary funding and the responsibilities of the federal agencies.

Judi Johansen - Observed that at the March 24 meeting in Spokane cultural resources was the main issue. She agreed that there is a need to deal with this issue working with the Bureau of Reclamation and the Corps. SOR (System Operation Review) funding for cultural resources only concerned sites affected by river operations. Johansen said there are three topics that need to be considered: (1) Did we anticipate all of the cultural resource issues? (2) SOR did not deal with cultural resources in Duck Valley because SOR only considered sites affected by river operations. We will come down to Duck Valley to deal with you on these cultural resource issues within the next month.

Terry Gibson - The reservoir systems do impact tribal cultural resources. Each dam reduced the number~ of fish.

Judi Johansen - (3) The agencies need to work with the tribes on cultural resource matters and develop a list of specific steps and outcomes. We sturribled in the Spokane meeting because different agencies have different responsibilities regarding the broader cultural resource issues. The agencies have not adequately dealt with the cultural resource matters with the tribes and we need to do this. How else can we further the discussion on this matter unless we collectively develop a specific agenda?

Terry Gibson - We must fulfill section 106 of the NHPA including the requirements of Bulletin 38 with UI participation by the tribes. The SOR split the available dollars among the tribes, But tribes are not able to participate in the licensing process for the dams. Many sacred sites are under water and this needs to be addressed, The problem is further complicated by the fact that Idaho Power owns and operates the Hells Canyon dams, The responsibility to consult with the tribes can not be transferred to a private entity. Unless the cultural resource issues for the area are addressed, the Hells Canyon re-licensing process will be incomplete. In the middle of winter, a group of people toured the Hells Canyon area to survey cultural resources, but they missed a lot because certain plants and other cultural resources are only available during certain seasons.

Will Stelle - This is an opportunity to capture federal commitments to the tribes, but I am not sure how to do that. We need advice and suggestions from the tribes.

Claudio Broncho - The headwaters of the rivers are being left out of the discussion. Without the headwaters there would be no rivers, Fish spawn in the headwaters. The up-river tribes are not getting the funding that down-river tribes are. The tribes never agreed to building the dams, The federal government imposed its will on Indian people.

Jesse Wadsworth, Shoshone-Bannock Tribes, said that the up-river tribes are always on the bottom end of funding. The federal government needs to assist the tribes. We don't have the scientists that you do but we do have the knowledge because we've lived it and we've seen it.

Terry Gibson - asked if the agencies are open to working with the tribes on cultural resource.

Col. Mogren - Yes, the All-H Paper is a vehicle for doing that.

Terry Gibson - We need resources and support including recognition of our need for ceremonial taking.

Judi Johansen - The All-H Paper will be finalized in a few months. We can't develop a basin-wide cultural resources program in the All-H Paper. The All-H Paper needs to describe federal obligations and identify steps, measures and milestones. It will provide a framework for dealing with cultural resources. We need a group of knowledgeable people to work it out.

Terry Gibson - We don't want the All-H Paper to be the end of the commitment. It is important to continue on with an honorable effort to go forward.

Bruce Wynn, Spokane Tribe - We went over much of this in the Spokane meeting. What we need now is a commitment to get together. Brian Flett of our staff is available to stay over to work with you on this tomorrow-

Judi Johansen - We first need to craft a chapter in the All-H Paper. Bob Beraud from BPA's staff is available to work with you. Referencing the concern regarding priorities expressed earlier by Jim Martin of the Burns-Paiute Tribe, Johansen said BPA staff would follow up after the meeting,

Joe Peone - The issue of water quality was discussed at the March 24 meeting. A study is needed concerning toxic sediments in Lake Roosevelt. The tribes will oppose the BiOp if the issue of water quality and sedimentation is not addressed.

Mary Verner, Spokane Tribe - There seems to be a misunderstanding from the Spokane meeting. The AllH Paper is not a decision document. There is a need to address the impact of flood control operations on cultural resources needs. The tribes want federal decisions to be influenced by consultations with tribal people and to have cultural resource people advise the agencies on the impacts of river operations on cultural resources,

Will Stelle - Wanted to follow up on this point after the meeting.

Chad Colter - The agencies and tribes are committed to developing a chapter addressing cultural resources in the All-H Paper. The general focus of the meeting should now move to hatcheries and harvest.

Dan Gonzalez, Bun)s-Paiute Tribe - Resident fish always take the back burner when it comes to finding and programs. BPA has provided clear benefits for wildlife and the same commitment is needed to protect resident fish through land and habitat protection, We must protect habitat. He wants a commitment from BPA to have habitat protection in place first for resident fish and later to benefit salmon when they return.

Chad Colter - the UCUTs need to use one species to mitigate for another, There is a problem with conflicting units of measurement.

Bill Shake, U.S. Fish & Wildlife Service - Are there restrictions? There is a need to incorporate habitat improvements through the Council's amendment process. USFWS would support acquisition of key habitats. This should be reviewed through the resident fish experts at CBFWA to come up with a way to get it done.

Deb Louie - Resident fish issues need to get on the table. The federal agencies need to focus on other issues besides salmon.

Terry Gibson - Agrees with this concern. The ESA makes resident fish less important than salmon, Resident fish must take the place of salmon for tile up-river tribes. Does not want resident fish issues to be pushed aside.

Carl Furike, Facilitator for UCUT - Nothing in the All-H Paper addresses red band trout,

Terry Gibson - if we address red band trout now, we -,won't have to address it as a big issue 10 years later under ESA.

Bill Shake - USFWS agrees and will take this message back to die technical folks to start folding it into the All-H Paper.

Bob Austin, BPA - This information should be provided to the Council as it sets up its new process.

Dan Gonzalez - Policies need to be developed to address this issue.

Bob Austin - Now is a crucial time to bring this to the Council's attention.

Joe Peone - The Colville Tribes must buy salmon to meet ceremonial needs. Fifty percent of the salmon harvest allocation is available for commercial harvest and the other 50 percent is

available to the lower-river tribes. Under what authority did the Colvilles not get an allocation? The BIA hides behind the treaty tribes. When Grand Coulee Dam was constructed, four hatcheries were approved to mitigate for the loss of the fish. The fourth hatchery never got built although the Congressional authorization is in place. There is no need for this hatchery to go through the Council's authorization process. The BOR and BPA are obligated to pay for this fourth hatchery.

Judi Johansen - Why do you not believe it should be subject to the Council's process and the artificial production review? Is your concern the possible program delay?

Joe Peone - Has no objection to the program review. The hatchery is long overdue and we need to get it in

place, 0

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Ken Pedde - Had not heard of the fourth hatchery authorization before. There may be some record of this but he is not sure.

Bill Shake - Was not aware of a fourth hatchery authorization. According to a report by Frederick Fish, the only suitable hatchery sites during the 1939-1947 period were in Canada, but it was during war time.

Joe Peone - We need to figure out where we go from here.

Will Stelle - The latest estimates of the risk of extinction are high for upper Columbia stocks. Perhaps a small safety net supplementation program would be helpful.

Joe Peone - We are interested in saving salmon and in having salmon for harvest. We are talking two different types of hatchery operation.

Chad Colter - At what point do we start bringing fish into areas where none are left? How does the All-H Paper address out-of-basin stock?

Will Stelle - Doesn't know but would like to talk more about this after the meeting.

Terry Gibson - We will face the same issue regarding red band trout unless something is done now.

Joe Peone - Has the impression that the All-H Paper applies only to treaty tribes but it should apply to all tribes. There is a need to move to conservation activities as well as mitigation. Would like assurances that mitigation facilities will continue.

Keith Hatch - Responding to the earlier question regarding by who's authority the 50-50 allocation of harvestable salmon was made. Judge Bolt made an initial decision regarding harvest of salmon in Puget Sound. Judge Beloni followed this precedent, Executive order tribes seem to be handicapped if the language of judicial orders is not specific.

Joe Peone - If treaty tribes have fishing rights, the executive order tribes have the same rights.

Col. Mogren - There is no separate decision making process for flood control now. In the new BiOp, the Corps is agreeing to study this issue, but has been warning interested parties that we could end up reducing the amount of water available as a result of a revised flood control regime.

Operational decisions are made through the TMT (Technical Management Team) process and wants to encourage tribes to participate in that and in the SCT (System Configuration Team). Tribes seem to want a separate process outside the SCT and the Corps is reluctant to do that because it could create a lack of coordination among all of the regional participants.

Deb Louie - Millions of gallons of water flows out of Lake Roosevelt pool for Moses Lake irrigation and ends up flowing into the Columbia River. Are there any records showing that this happens?

Ken Pedde - We have long-term records of this, The BOR has also considered pumping into Banks Lake and Pot Holes.

Chad Colter - The tribes pulled out of the TMT because they felt they were not being heard. The federal agencies controlled the process and the question is how to get the tribes more comfortable with the process,

Col. Mogren - Being in the process is no guarantee that participants will get what they want. I cannot guarantee the outcome.

Chad Colter - The tribes perceived the TMT process as unfair.

Terry Gibson - We would like a copy of the Department of Defense Indian policy. Can you provide that?

Col. Mogren - Yes.

Joe Peone - The agencies have shifted the power production from Chief Joseph Dam to Grand Coulee. THYINK I MISSED THE POINT HERE. 140PE P141L OR ALEX CAN FILL IN.) The new BiOp is proposing to change the definition of a drought year to an 90 MAF year instead of the current 65 MAF. The tribes don't agree that there has been proper NEPA compliance for this decision and will oppose it. The SOR was not sufficient.

Col. Mogren - Would the tribes reconsider their position regarding participation in the TMT?

Joe Peone - We don't have the resources to participate,

Chad Colter - The Sho-Bans need resources to participate. If the resources were available we might reconsider.

Bruce Wynne - The UCUTs do not have the funding to participate.

Howard Funke - The Spokanes sent a letter to the Corps requesting consultation on the flood control issue.

Col, Mogren - We are in the process of responding to your letter, We agree that consultation has to happen.

Howard Fixnke - The up-river tribes are impacted by decisions on flood control. Without proper consultation our only fall back is to challenge the BiOp.

Judi Johansen - One of the major reasons for this meeting is to discuss these issues.

Roward Funke - We keep hearing the same issues again and again. It puts us in the position of not having time to address the pertinent issues and get them resolved. We need more time to do this.

Will Stelle - Doesn't know why executive order tribes don't have an allocation for salmon harvest. The Columbia River Fish Management Plan has expired and we are now working to develop a new plan.

Fred Howard - Hells Canyon Dam has stopped subsistence fishing. We need to have the salmon reintroduced, The salmon are tied to our traditions and culture.

Joe Peone - The Colville Tribes intervened in the re-licensing process last year but Judge Marsh denied our motion because we were too late in the process. We have done more on this than NMFS.

Deb Louie - The Colvilles were signatories to the HCP (Habitat Conservation Plan), Why should we support getting fish to the ocean if others don't support our right to a portion of the harvest of returning fish? Kettle Falls represented a major loss of our salmon harvest. That's why the Colvilles have insisted on completing a \$100,000 study of habitat above Chief Joseph Dam.

Chad Colter - Move The focus of the meeting to hydropower. Key issues are the effect of Hells Canyon operations on cultural resources, water quality and flow augmentation. Water quality is an important issue because the quality of Snake River water is not suitable for fish.

Joe Gonzalez - Question regarding BOR reservoir operations. There are no minimum flow requirements for Bueller and Warm Springs reservoirs, which allows them to be drained dry, We can't bring the salmon back if BOR dams block migration. Why is there no regulation of water quality?

Ken Pedde - The USFWS BiOp addresses this problem. Water is ~i short supply and it is difficult to meet all of the competing interests.

Joe Gonzalez - The dams are not there to benefit fish.

Ken Pedde - The BOR is constrained by law. The Congressional authorization for those dams is single purpose.

Joe Gonzalez - EnErainment is a big problem for bull trout.

Ken Pedde - BOR will take a look at this. Doesn't know what can be done and can offer no answers. BOR faces the same problem at AiTow Rock and other places.

Claudeo Broncho - How does the incidental take issue apply to fish that die below Hells Canyon Dam?

Will Stelle - This will be an issue for re-licensing of Idaho Power Company dams, Doesn't know if NMFS has consulted on this matter with FERC.

Ken Pedde - There have been consultations on existing operational issues but not for re-licensing.

Will Stelle - NMFS will address this. It could result in a permit for incidental take for Idaho Power Company I

Gary Sims, NMFS - A letter with information on this had been sent out to the tribes for comment.

Terry Gibson - A letter is not sufficient notice to start consultation. Cultural resources are a major issue in the Hells Canyon area where there has been exposure of skeletal remains.

Bruce Wynne - These issues are also familiar to the Spokanes. The tribe needs to participate in the flow augmentation decision making process but funding is a problem. Not sure if they have the necessary technical staff. Need to address this at another meeting.

Ken Pedde - We have been having rechn meetings with the tribes to address concerns about cultural resource issues and other matters. What hasn't been said?

Howard Funke - We don't want to wait until you have made a decision. We must be part of the decision making process. Going to TMT and SCT is not an acceptable solution. How will you address these concerns?

Col. Mogren - We will respond to the letter from the Spokanes and will run it by Howard Funke before we sign it to make sure we have responded adequately, Asked to have this specifically included as one of the follow-up items from this meeting.

Claudeo Droncho - We need to sit down with die agencies and address the issues that are specific to individual tribes. This meeting seems to be repeating things that have already been discussed.

Judi Johansen - The meeting has not been repetitious for me. I feel I have learned from it although some of the issues are overlapping. it is important to hear about the impacts on Lake Roosevelt. Not enough consideration has been given to the interests of the up-river tribes. I want you to know that BPA has heard you and we will work with you and the other federal agencies. We intend to give serious consideration to your cultural resources and other interests, We will get the appropriate technical staffs together to work out what is required to deal with these issues. At our next meeting we will review the technical staff s products for adequacy. We need to find a balance and make sure this is addressed in the All-H Paper.

Ken Pedde - These matters are all up for discussion. No decisions have been made.

Claudeo Broncho - You've heard our concerns. We've been discussing these issues for a long time. The question is "what is going to happen?"

Judi Johansen - Everything is not going to be wrapped up all at once. You'll see them in draft before they are finalized including any changes or additions that may result from our discussions with the states. We will share the drafts with you and we want to hear your comments and concerns. We will follow the same process regarding other decisions that will be made in other venues, We need to go as far as we can in the AIM Paper but it doesn't end there. We hope to reach a final decision that will be more balanced.

Terry Gibson - Referred to the BOR's SR-3 process. At first the tribes participated but then people in Reclamation perceived the tribes as a threat. Reclamation cut off our funding and that was the end of it.

Ken Pedde - It is true that we couldn't come to an agreement,

Terry Gibson - Expressed concern that the agencies not perceive the tribes as a threat. 'None of the information the tribes provided in the SR-3 process was used,

Howard Funke - Expressed appreciation for the increased access the agencies have provided to the tribes for input to agency decision making.

Bruce Wynne - Expressed appreciation for the federal agencies' willingness to talk with the tribes. We need to keep this process going and have more sessions like this one. But two-thirds of the tribes here cannot participate in the ongoing process because of a lack of resources.

Judi Johansen - Collectively, we have been involved dealing with these issues since the 90s. These are the most substantive discussions that we've had so far.

Chad Colter - The federal agencies have offered to make technical staff available to meet with us tomorrow. Is there a need to do this?

Judi Johansen - The only BPA cultural resources technical staff available to meet with you tomorrow.

Alex Smith, BPA - Bob Austin is also available but we don't have anyone who can address operational issues.

Chad Colter - Suggested that they meet in the DoubleTree and plan to be done by noon,

Terry Gibson - Cultural resources is a human rights issue for tribes. It relates to our traditions, culture and way of life. The tribes are concerned that we find a way to preserve our traditional ways, The way archeologists have treated Indian cultural resources amounts to ethnic cleansing. Archeologists remove Indian remains and the tribes are not allowed to re-bury them. Some federal agency people see it as more than just a job. But others take the opposite view. The tribes have fought and died to preserve their culture. But some archaeologists see NAGPRA as an attack on their interests. Indian remains have disappeared and turned up at various universities so that tribes cannot keep track of them. Only tribes can identify sacred objects. After these meetings are over and the All-H Paper is completed we would like to get together on a quarterly basis,

Gary Sims - Reported that the draft BiOp on Hells Canyon has gone out to tribal leaders. He will send out e-mails to remind tribes of NMFS' invitation to consult with the tribes on the BiOp.

Howard Funke - Is there any possibility of tribes getting funding so they can participate in the basin process?

Terry Gibson - That is a critical need.

Alex Smith - Bob Shank has been working on this.

Bob Shank, DPA - BPA has provide \$300,000 for tribal participation in the All-H Process-, \$23,000 is earmarked for the Shoshone-Paiute tribes and they should be receiving the money in about Three weeks. The funds will be for Guy Dobson. The UCUTs are pooling their money.

Chad Colter - \$23,000 is about one-fourth of an FTF,

Carl Funke - A meeting is planned with the CEQ on April 25 that will likely include both lower-river and up-river tribes. The meeting agenda has not been prepared.

Chad Colter - We need to get this done.

Judi Johansen - Our staffs are available to work with you on the agenda but it is t the tribes,

Will Stelle - One thing we haven't adequately addressed is the need to rebuild tributaries. As was pointed out earlier in this meeting, head waters are critical to the rivers. The tributaries are also critical. We would like to work with you to develop habitat strategies for the tributaries.

Col. Mogren - The Corps will respond to the letter from the Spokanes and may share it with the rest of the UCUTs.

Judi Johansen - We have had a good discussion here today but it has not been repetitious. I hope these discussions will lead to decisions that will better reflect your interests, We need to have policy level discussions on a regular basis. Thank you for this opportunity to meet with you.

Follow-up Items

BPA will meet with the Shoshone-Paiute Tribes within the next month. SPA will meet with the Burns-Paiute Tribe regarding their need for funding.

Corps of Engineers will provide a copy of the Department of Defense Indian policy to the Shoshone-Paiute Tribes.

Corps will respond to a letter from the Spokane Tribe of Indians.